

Request for Sponsorship



Service Line Warranty Partner

Corporate Partnerships and Development Program
Economic Development Department
City of San Diego
January 2022

Introduction

The City of San Diego (“City”), through its Corporate Partnership and Development Program (CPD), seeks opportunities for the City to partner with various business endeavors. CPD’s goal is to support City programs and services through leveraging City assets within the guidelines established by the Mayor and City Council, municipal law, City ordinances and sound policy. For this opportunity, CPD is issuing this Request for Sponsorship (“RFS”) to identify a company that is interested in developing a Partnership with the City of San Diego in the Service Line Warranty category that would support City’s effort’s to communicate to homeowners their responsibility for water and service lines on their property.

The selected partner will be a qualified homeowner warranty service provider, known for quality and reliable service.

Partnership Terms

To be considered for this partnership with the City, a company must submit a proposal addressing the following criteria and demonstrate that it is a company qualified and capable to achieve the City’s goals for this partnership. The service provider will be responsible for all aspects of the warranty program, including marketing the program to city residents and addressing any inquiries regarding the warranty program or claims process.

1. Financial Return to City
 - a. Provide proposed annual guaranteed marketing rights fee and proposed licensing fee with projections to City and contract term length.
2. H2O Program Support
 - a. The City of San Diego has developed an H2O fund to help assist low-income residents with the increasing cost of water. Please state how your company can provide additional support for this program outlined in **Attachment A**.
3. Marketing the Program
 - a. The City’s role in the program is to provide implementation details including samples of all marketing materials and communications that provide critical information to residents about their responsibility for their water/sewer lines on their property. Please provide any marketing materials that would include the City logo and partnership designation.
 - b. Currently, the City’s Service Line Warranty Partner conducts three pre-approved, annual campaigns to residents and one campaign to City of San Diego employees.

Provide information on how your company will market to City's residents and employees including proposed frequency and methods.

4. Qualifications/References

- a. Provide the number of years your company has been in business, the total number of employees, size of service staff, information on company officers, and all other information pertinent to your company's qualifications for this partnership opportunity.
- b. Provide a minimum of three client references for the public sector for which your company has successfully provided similar Water/Service Line insurance services.
- c. Provide basic financial information of firm to establish sustainability.

5. Experience

- a. Describe your relevant service line warranty product experience. Provide information on prior experience your company has in providing service line warranties to other municipalities via contractual agreement.

6. Community involvement and Sustainability

- a. Describe your conservation efforts internally and externally.
- b. Describe community related activities.

7. Service Provider Questionnaire

- a. Please review and complete **Attachment B**.

Benefits to Service Line Warranty Partner

The following is a list of the primary business and marketing rights, benefits, and opportunities that are available to the partner chosen for this business category:

- **Official Service Line Warranty Partner.** The selected partner shall have the right to be designated and referred to as the "Official Service Line Warranty Partner" or a similar title as mutually agreed upon and to use said designation in marketing efforts. In exchange for this designation partner shall at all times during the term comply with Council Policy 000-41, Endorsement policy.
- **Advertising Rights.** The selected partner shall have the right to promote the service line warranty partnership when offering products and services to City of San Diego residents and employees.

- **Media Rights.** The selected partner may be provided media opportunities to promote official partnership as mutually agreed upon.
- **Branding.** The selected partner shall be named on all promotional materials used in connection with branding the program as the “Official Service Line Warranty Partner” or a similar title as mutually agreed upon. The selected partner shall be provided the opportunity to have logo presence and information placed on sandiego.gov, social media platforms, and the City’s intranet site subject to City approval in its sole discretion. The webpages and postings will include a link to the selected partner’s web site. The selected partner shall be provided the opportunity to be highlighted in internal citywide communications and internal citywide e-newsletter currently called “The Insider,” as mutually agreed upon. Any and all promotional materials must be consistent, in both form and content, with all current and future City policies related to web sites including Council Policy 000-40, Marketing Partnership policy, and the City’s Web Sponsorship Guidelines
- **Events.** The selected partner shall have the opportunity to participate in City-hosted events as mutually agreed upon.

The City encourages proposers to suggest additional business and marketing benefits that will also achieve their marketing goals and objectives in San Diego, regional, and other target markets.

Term

The term of the agreement will not exceed five (5) years.

Marketing Rights Fee

In exchange for the Marketing Program Benefits and Opportunities, and other potential negotiated benefits, partner agrees to provide the City a marketing rights revenue share dependent on final negotiated terms of the agreement. Partner should detail the advertising revenue share model as well as any in-kind value including donations to City sponsored events or programs.

Proposal Submission Information

Proposals must be received at the email or physical address listed in the Contact Information below no later than 5:00 PM on January 31, 2022. Proposals received after that time will not be considered. Please obtain confirmation that your proposal was received.

All materials submitted become the property of the City of San Diego and may not be returned, with the exception of proprietary financial information identified by the proposer as such. Questions should be submitted via email to corporatepartnerships@sandiego.gov by 5:00 PM January 14, 2022.

Sarah Brenha
Program Manager
Corporate Partnerships and Development
1200 Third Ave Suite 1400

San Diego, CA 92101
corporatepartnership@sandiego.gov

Proposal Evaluation

Upon completion of the City's evaluation of the submitted proposals; the City may request a final interview and presentation from one or more proposers. The City may reject any or all proposals at its discretion. The City will, in its sole discretion, choose the company/or companies it determines will best meet the City's overall objectives for this partnership. The City reserves the right to select partners based on its review of the submitted proposals, without requiring interviews or presentations. If an insufficient number of proposals are received or the proposals received are inadequate or do not meet the terms of the RFS, City may, at its sole discretion, reissue the RFS or enter into an agreement with a partner of its choice. If selected, the parties will enter into the Agreement that is subject to City, state, and federal laws and regulations (**Sample-Attachment C**). Furthermore, any ultimate selection is subject to City Council approval.

The City will use a point formula during the review process to score proposals.

Partner Selection Schedule

The following is the proposed schedule and key dates for finalizing a marketing agreement.

All dates are subject to change:

- RFS issued- January 3, 2022
- RFS closed- January 31, 2022 by 5:00 pm
- RFS question period ends- January 14, 2022 by 5 pm
- Review of proposals- February 1-18, 2022
- Partner Selection- February 28, 2022
- Agreement negotiation- March/April 2022
- City Council Committee/Resolution* - May/June 2022
- Commencement of Project- July 2022

*Contingent on available docket dates and overall availability of Council meetings.

ATTACHMENT A

H2O SD Program

H2O SD is a bill payment assistance option for qualified low-income and fixed income water utility customers within the City of San Diego.

In compliance with the California Constitution, the program is funded solely by voluntary donations and will help prevent utility service interruptions to those in need. Charitable contributions made to governmental agencies for a public purpose are tax deductible under section §170(c)(1) of the Internal Revenue Code.

Please state how your company can provide additional support for this program.

ATTACHMENT B

Service Line Provider Questionnaire:

Please answer each of the following questions clearly and concisely. Questionnaire must be included with RFS proposal response.

COVERAGE:

1. What items are included as part of the warranty?
2. What items are excluded as part of the warranty?
3. Does the warranty include any items the inside homes?
4. Is soil movement due to ground shifting covered? What is the coverage for issues related to natural disaster?
5. What replaces landscaping, if damaged?
6. What are variations in coverage?
7. How selective are you when choosing contractors to conduct repairs?
8. How will contractors be selected to complete claim repairs?
9. What codes will you adhere to? Will you comply with the current code(s)? Will you comply with the original code(s) at time of installation?

CLAIMS:

10. What is the claims process when a customer has a claim?
11. What is your overall denial rate with respect to the warranty products covered by this RFS? Provide appropriate documentation, including criteria for what constitutes a denied claim.
12. What are the event caps for the warranty? What are the annual caps per household? How is this communicated to the customer?
13. What happens if it is unclear whether the cause of the break is on the city's side of the line?
14. Will a customer have a long hold time when reporting a claim? Will the customer always get a live operator when they call?
15. If the customer makes a claim and an injury occurs waiting on repairs to be done – who is liable?
16. If customer has a grievance, how will this be handled?
17. How is customer service evaluated?

MARKETING/CUSTOMER ISSUES AND OTHER:

18. What cities or other public agencies are you currently working with? Please describe the agreement(s).
19. If the service provider does not pay the contractors, and the contractor files a lien against the homeowner, how will this be resolved?
20. Educating the customer might cause extra call volume to the cities. How will you assist the City in this event?
21. How will the warranty program be communicated to residents? What cooperation will be needed from the City?
22. Provide samples of reports that you will provide to the City regarding program performance.

CUSTOMER CONTRACT

23. What billing options, including frequency, are provided to the customer?
24. How does the resident sign up for the product? Provide samples of available information and resources.
25. What is the term of the warranty contract for the customer? What is the cancellation policy? What is the pricing matrix for each product and payment frequency? Outline available discount programs and total costs to the customer.
26. Provide sample contracts with customer for proposed products for this RFS.

RATINGS/LEGAL/INSURANCE AGENCY ISSUES

27. What is your company's national Better Business Bureau (BBB) accreditation (A+, A, B, etc.)? Please provide appropriate documentation.
28. Has your company or any affiliates been involved in any state Attorney General complaint, fine, action or settlement over the past three years? If yes, please provide detailed information.
29. Has your company or any affiliates been involved in any state Department of Insurance or related agency complaint, fine, action or settlement over the past three years? If yes, please provide detailed information.
30. What if the company goes out of business? How are the customers protected?

ATTACHMENT C

Sample Terms and Conditions

Section 5. City's Reservation of Rights

5.1 Partner shall submit to City for review and approval all marketing and promotional materials to be used in conjunction with the Agreement. Such materials shall be submitted to the City's Program Manager of Corporate Partnerships and Development and shall review the materials and respond to Partner within five (5) working days of receipt. Approval of the materials shall be wholly within the City's discretion, but such approval shall not be unreasonably withheld, conditioned, or delayed.

Section 6. Intellectual Property

6.1 Restriction on Licensing and Use of Marks. The City and Partner shall each retain ownership of, and all right, title and interest in and to, their respective intellectual property and all related intellectual property rights (including patent, trademark, and/or copyrights), and other than a limited license to use one another's trademarks and service marks ("Marks") in marketing and advertising in accordance with the terms of the Agreement, no license therein, whether expressed or implied, is granted by the Agreement. To the extent the Parties wish to grant additional rights or interests in intellectual property, separate licensing agreements on mutually acceptable terms shall be executed. Neither Party shall use the other Party's name, seal, Marks, or any other identifiers in any manner that would bring that Party or any of its respective agents, representatives, employees or contractors into public disrepute, contempt, scorn or ridicule, or in any manner that would tend to shock, insult or offend the community, public morals or decency. Neither Party shall use the other Party's Marks or other identifiers to incur any obligation or indebtedness or to hold itself out as being or representing the other Party. The obligations of the Parties under this section will survive expiration or termination of the Agreement.

6.2 Use of Name, Seal and Logo. Partner may use the City's name, seal, logo, and Marks (collectively, "City's Identifiers") only as set forth in the Agreement, to carry out the terms of the Agreement, and not for any other purpose. Any use other than that specifically provided for by the Agreement requires the prior written consent and approval of City. The City may use Partner name and Marks only as set forth in the Agreement, for the purpose of carrying out the terms of the Agreement, and not for any other purpose, subject to review and final approval by Partner, which approval shall not be unreasonably conditioned, withheld, or delayed.

Section 7. Confidentiality

7.1 Nondisclosure Agreement. If either City or Partner determines that it is necessary to provide confidential, proprietary, or trade secret information to the other Party, such disclosure shall only be made after advance written notice, and only under the terms of a separate "nondisclosure" agreement. Each Party's consent to enter said "nondisclosure" agreement shall not be unreasonably withheld, conditioned or delayed.

7.2 Public Records Requests. Information contained in the Agreement and reports and other documents required by the Agreement are public records subject to disclosure, unless a specific exemption in the California Public Records Act (“CPRA”) applies. The City may protect confidential and proprietary information provided by Partner only to the extent permitted by law. If Partner provides the City with information that is clearly marked as confidential or proprietary, and the City receives a CPRA requesting such information, then the City agrees to inform Partner of the request so that Partner may seek an appropriate protective order or other appropriate remedy to safeguard the confidentiality of its information.

7.2.1 If Partner clearly marks any information contained in the Agreement as confidential or proprietary, the City shall protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of Partner to provide the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA. General references to the CPRA will not suffice. Rather, Partner must provide a specific and detailed legal basis, including applicable case law that clearly establishes the requested information is exempt from the disclosure requirements of the CPRA.

7.2.2 If Partner does not provide a specific and legal detailed basis for withholding the requested information within a reasonable time specified by the City, the City will release the information as required by the CPRA (unless ordered by a court of competent jurisdiction not to do so), and Partner will indemnify and hold the City harmless for the release of this information.

7.2.3 It is Partner’s obligation to defend, at Partner’s expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at Partner’s request.

7.2.4 Unless clearly marked as confidential or proprietary as described above, nothing in this contract creates an obligation to notify Partner or to obtain Partner’s approval or consent before releasing information subject to disclosure under the CPRA.

Section 8. Compliance with City Contracting Laws

8.1 Americans with Disabilities Act. Partner agrees to comply with Council Policy 100-04, which establishes that all City contractors, including but not limited to construction contractors, consultants, grantees, and providers of goods and services agree to comply with all applicable titles of the Americans with Disabilities Act. Council Policy 100-04 is by this reference incorporated into the Agreement.

8.2 Drug Free Workplace. Partner agrees to comply with Council Policy 100-17 that requires all City construction contractors, consultants, grantees and providers of services to provide a drug-free workplace for the performance of work done in connection with a contract held by the City. Council Policy 100-17 is by this reference incorporated into the Agreement.

8.3 Equal Employment Opportunity Outreach Program. City and Partner agree that the Agreement is a Marketing Partnership with mutual benefits and obligations running to each Party, and not a contract for the provision or labor, materials, goods, supplies, services, or consultant services to the City, or for a grant from the City, or for the construction of public works, as the term “contract” is used and defined in San Diego Municipal Code sections 22.2701-22.2708 (EEO Outreach Program), 22.3501-22.3517 (Nondiscrimination in Contracting Ordinance), and 22.4301-

22.4308 (Equal Benefits Ordinance). Notwithstanding that understanding, Partner acknowledges the importance of the goals and objectives of the City's program, and for the purpose of the Agreement, Partner agrees as follows:

8.3.1 Partner shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Partner shall provide equal opportunity in all employment practices.

8.3.2 Partner shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Partner shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Partner understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in termination, debarment, or other sanctions. Contracts between Partner and any subcontractors, vendors, and suppliers shall contain language that requires compliance with existing federal, state, and local discrimination laws.

8.4 Non-Discrimination in Contracting Ordinance. Partner shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Partner shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Partner understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between Partner and any subcontractors, vendors, and suppliers shall contain this language.

8.5 Equal Benefits Ordinance. The Agreement is subject to City's Equal Benefits Ordinance (SDMC §§ 22.4301 -22.4308) requiring that the City contract only with contractors offering the same employment benefits to employees with spouses and employees with domestic partners. Partner certifies that it will: provide and maintain equal benefits as defined in Equal Benefits Ordinance for the duration of the Agreement; notify employees of the availability of equal benefits at the time of hire and during open enrollment periods; post notice of the availability of equal benefits in an area frequented by employees; and provide City access to documents and records demonstrating compliance with the Ordinance. Failure to maintain equal benefits is a breach of the Agreement.

8.6 Federal Law. Any health and wellness program offered to City employees, retirees or family members by Partner under the Agreement that ask participants to respond to disability-related inquiries and/or undergo medical examinations will comply with the Americans with Disabilities Act and Genetic Information Non-Discrimination Act requirements for health and wellness programs both in program design and confidentiality of health information.

8.7 Conflicts of Interest Laws. Partner is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, et. seq. and 8100, et seq., and the Ethics Ordinance, codified in the San Diego Municipal Code ("SDMC"). City may determine that Partner must complete one or more statements of economic interest disclosing relevant financial interests.

Section 9. Insurance

9.1 Insurance. Partner shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Partner, his agents, representatives, employees or subcontractors.

Partner shall provide, at a minimum, the following:

9.1.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

The City agrees to the CGL form on a "claims-made" basis for products and completed operations as long as it meets the conditions outlined below in paragraph 9.1.5.5. The required \$2,000,000 per occurrence limit can be achieved through the combination of primary and excess liability policies.

9.1.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Partner has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

9.1.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

9.1.4 If Partner maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Partner. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

9.1.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

9.1.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Partner including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Partner's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

9.1.5.2 Primary Coverage. For any claims related to this contract, Partner insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Partner's insurance and shall not contribute with it.

9.1.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

9.1.5.4 Waiver of Subrogation. Partner hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Partner may acquire against City by virtue of the payment of any loss under such insurance. Partner agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

9.1.5.5 Claims Made Policies. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Partner must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

9.2 Self Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Partner to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

9.3 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City. City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

9.4 Verification of Coverage. Partner shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Partner obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9.5 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

9.6 Additional Insurance. Partner may obtain additional insurance not required by this Contract.

9.7 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

9.8 Subcontractor. Partner shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Partner shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractor shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

Section 10. Indemnification

10.1 To the extent allowable by law, Partner agrees to indemnify, defend, and hold harmless City, its officers, directors, agents and employees from and against any and all claims, demands, obligations, causes of action and lawsuits and all damages, liabilities, fines, judgments, costs (including settlement costs), and expenses associated therewith (including the payment of reasonable attorney fees and disbursements), arising out of, or in any way directly or indirectly connected with: (1) this Agreement (2) the failure of Partner, its employees or agents, to comply with the terms and conditions of the Agreement; (3) the negligent acts or omissions of Partner, its employees, agents, or subcontractors, (4) City's use of Partner's Marks in accordance with the terms and conditions of the Agreement; or (5) the services performed or actions taken by Partner, its employees or agents, in connection with the Agreement.

10.2 The Parties agree and understand that City shall in no way be liable for any claims arising out of the provision of services by Partner, including but not limited to the services Partner performs under the Agreement for City employees and, Partner agrees and understands that its obligation to indemnify, defend, and hold harmless City as stated in section 10.1 includes but is not limited to any claims arising out of its provision of services performed under the Agreement.

This Section 10 shall survive the expiration or termination of the Agreement.

Section 11. Event of Default and Dispute Resolution

11.1 Event of Default. The following shall constitute an Event of Default ("Event of Default") under the Agreement, regardless of whether any such event shall be voluntary or involuntary or shall result from the operation of applicable laws, rules, or regulations or shall be pursuant to or in compliance with any judgment, decree or order of any court of competent jurisdiction:

11.1.1 Partner fails to comply with the insurance requirements of the Agreement and such failure is not remedied within ten (10) days of receipt of written notice thereof from the non-defaulting Party;

11.1.2 Either Party fails to comply with any material term, condition, or obligation of the Agreement and such failure continues for a period of thirty (30) days after the receipt of written notice thereof from the non-defaulting Party;

11.1.3 Either Party commences as a voluntary case or other proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or similar law, or shall make a general assignment for the benefit of creditors, or shall have an involuntary case or other proceeding instituted against it seeking similar relief.

11.2 Declaration of Default. Upon the occurrence of an Event of Default, as described above, and at any time thereafter so long as the same shall be continuing, the non- defaulting Party may declare, at its option, the Agreement to be in default and may immediately terminate the Agreement without any liability whatsoever.

11.3 Dispute Resolution. If a dispute arises out of, or relates to the Agreement, and if the dispute cannot be settled through negotiations, the Parties agree to first endeavor to settle the dispute in good faith, using mandatory non-binding mediation administered by a neutral professional mediator affiliated with and under the rules of the National Dispute Resolution Center (NRDC) or JAMS, before having recourse in a court of law.

11.3.1 Any such mediation shall be held in San Diego, California. The Parties agree to select a mediator from NRDC's or JAMS's panel of approved neutrals.

11.3.2 The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise.

11.3.3 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

Section 12. Miscellaneous

12.1 Termination. Either Party shall have the right to terminate the Agreement upon the occurrence of an Event of Default, as described in Section 11.1.

12.2 Notices. In all cases where written notice is required under the Agreement, service shall be deemed sufficient if the notice is deposited in the United States first-class mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in the Agreement. For the purpose of the Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to:

Corporate Partnership Program
Economic Development Dept.
1200 Third Ave Suite 1400
San Diego, CA 92101

with a copy to:

Office of the City Attorney
1200 Third Avenue, Suite 1620,
San Diego, CA 92101
and notice to Partner shall be addressed to:

Partner

Attn:
Address
City, State, Zip Code

12.3 Headings. All article headings are for convenience only and shall not affect the interpretation of the Agreement.

12.4 Non-Assignment. Neither Party may assign its rights or delegate its duties under the Agreement to any other party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. Subject to the provisions of this section, the Agreement shall inure to the benefit of and be binding upon the respective successors and assigns, if any, of the Parties hereto. However, any assignment in violation of this section shall constitute a default and is grounds for immediate termination of the Agreement. In no event shall any putative assignment in violation of this section create a contractual relationship with the putative assignee.

12.5 Independent Contractors. Notwithstanding the fact that the Parties refer to the arrangement as a Marketing Partnership Partner and any subcontractors employed by Partner shall be deemed to be independent contractors and not agents of the City. Any provisions of the Agreement that may appear to give the City any right to direct Partner concerning the details of operating the Corporate Partnership, or to exercise any control over such performance, shall mean only that Partner shall follow the direction of the City concerning the end results of the performance.

12.6 Covenants and Conditions. All provisions of the Agreement expressed as either covenants or conditions on the part of the City or Partner shall be deemed to be both covenants and conditions.

12.7 Compliance with Controlling Law. Both Parties shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to the Agreement. In addition, Partner shall comply immediately with all directives issued by the City or its authorized representatives in order to comply with any newly enacted or amended laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of the Agreement.

12.8 Jurisdiction, Venue, and Attorney's Fees. The venue for any suit or proceeding concerning the Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California

12.9 Successors in Interest. The Agreement and all rights and obligations created by the Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by the Agreement shall be vested and binding on any Party's successor in interest.

12.10 Integration. The Agreement and the exhibits and references incorporated into the Agreement fully express all understandings of the Parties concerning the matters covered in the Agreement. No change, alteration, or modification of the terms or conditions of the Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties and an amendment to the

Agreement agreed to by both Parties. All prior negotiations and agreements concerning the subject matter hereof are merged into the Agreement.

12.11 Counterparts. The Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page. Execution and delivery of the Agreement by facsimile or electronically recorded copy (including a .pdf file) bearing a copy of the signature of a Party shall constitute a valid and binding execution and delivery of the Agreement by such Party. Such copies shall comprise enforceable original documents.

12.12 No Waiver. No failure of either the City or Partner to insist upon the strict performance by the other of any covenant, term or condition of the Agreement, nor any failure to exercise any right or remedy upon a breach of any covenant, term, or condition of the Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter the Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

12.13 Severability. The unenforceability, invalidity, or illegality of any provision of the Agreement shall not render any other provision of the Agreement unenforceable, invalid, or illegal.

12.14 Municipal Powers. Nothing contained in the Agreement shall be construed as a limitation upon the powers of the City as a chartered City of the State of California.

12.15 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of the Agreement, and the decision of whether or not to seek advice of counsel with respect to the Agreement is a decision which is the sole responsibility of each Party. The Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement. Any rule of law (including without limitation California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in the Agreement against the Party drafting it is not applicable and is waived.

12.16 Signing Authority. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

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